

ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF TEXAS  
FORT WORTH DIVISION

FILED  
U.S. DISTRICT COURT  
NORTHERN DIST. OF TX  
FT. WORTH DIVISION

2014 JUL 14 PM 4:12

CLERK OF COURT

UNITED STATES OF AMERICA

v.

CHRISTOPHER ROBERT WEAST

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Cause No. 4-14-CR-023 A

**MOTION IN LIMINE AND BRIEF: PRIOR CONVICTION**

Defendant CHRISTOPHER ROBERT WEAST files this motion in limine to prohibit the government from presenting evidence concerning any prior convictions.

Rule 609(a)(1) explicitly states that evidence of a prior felony conviction is admissible to impeach a witness **“other than the accused,”** but **“evidence that an accused has been convicted of such a crime shall be admitted if the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the accused. . .”** Fed. R. Evid. 609(a)(1) (emphasis added). Rule 609(b) states that

Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.” However, evidence of a conviction more than 10 years old as calculated herein, is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

Fed R. Evid. 609(b).

Mr. Weast has a conviction from 1992 for delivery of marijuana and a 2003 charge for theft

of services that is unrelated to the current charge.

Both of the prior convictions occurred over ten years ago. Pursuant to Federal Rules of Evidence 609(b), these convictions can only be used if its “probative value, supported by facts and circumstances, substantially outweighs its prejudicial effect; and the proponent gives...reasonable notice of its intent to use it.” Fed. R. Evid. 609(b). In this case, the government has not provided any notice. Defense counsel states that there are no facts or circumstances that could be alleged by the government that would ensure that the probative value would outweigh the prejudicial effect.

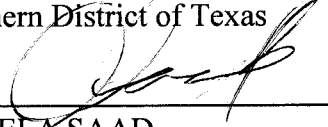
The convictions are not crimes involving “some element of deceit, untruthfulness, or falsification bearing on the accused’s propensity to testify truthfully dishonesty or false statement.” Fed. R. Evid. 609(a)(2). Cf. United States v. Ashley, 569 F.2d 975, 979 (5th Cir. 1978) (shoplifting not a crime of dishonesty within meaning of Fed. R. Evid. 609). Accordingly, the conviction is admissible for impeachment purposes only if its probative value outweighs its prejudicial effect to the defendant. See Fed. R. Evid. 609(a)(1). The Court must balance these factors on the record. United States v. Preston, 608 F.2d 626, 638 (5th Cir. 1979).

The government bears the burden to prove the probative value of the prior convictions for impeaching the defendant’s credibility outweighs its prejudicial effect to the accused. See United States v. Grove, 844 F.Supp. 1495, 1496 (C.D. Utah, Feb. 2, 1994) (quoting from Advisory Committee notes).

WHEREFORE, defendant requests this Court to prohibit the government from impeaching the defendant with his any prior convictions. In the alternative, the defendant prays that the jury be told only that the defendant has been convicted of a felony, without describing the nature of the conviction.


Respectfully submitted,

JASON HAWKINS  
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Northern District of Texas

BY:   
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**CERTIFICATE OF CONFERENCE**

I hereby certify that I, Angela Saad, attorney for defendant, did confer with Aisha Saleem, the Assistant United States Attorney assigned to this matter, and she is opposed.

  
ANGELA SAAD

**CERTIFICATE OF SERVICE**

I, Angela Saad, hereby certify that on July 13, 2014, I hand-delivered the foregoing motion with the clerk for the U.S. District Court, Northern District of Texas and the AUSA Aisha Saleem.

  
Angela Saad